

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4297

IN THE MATTER OF:

Served May 10, 1994

Application of D.C. DUCKS, INC., )  
for a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-94-21

By application filed May 6, 1994, D.C. Ducks, Inc. (DC Ducks or applicant), a District of Columbia corporation, seeks a certificate of authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

The application includes information regarding, among other things, applicant's corporate status, facilities, proposed tariff, finances, and regulatory compliance record. The application is available for inspection at the office of the Commission during its regular business hours.

Applicant proposes commencing operations on land and water with four amphibious vehicles, seating 33 passengers each. Applicant's proposed tariff contains special operations rates and charter rates, with minimum charges.

The proposed tariff provides for "familiarization tours at no charge to travel and tourism professionals" and certain others. The Compact, Title II, Article XI, Section 14 mandates that each carrier shall file with the Commission a tariff showing fixed-rates and fixed-fares, and practices and regulations relating thereto. Section 16 prohibits practices which are unduly discriminatory or unduly preferential between classes of riders. Commission Regulation No. 55-03 prohibits rebates of any compensation specified in a carrier's tariff. There is no generally recognized exception to these requirements for "familiarization tours."<sup>1</sup> Applicant will be directed

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<sup>1</sup> We note that the Interstate Commerce Commission (ICC), whose precedent this Commission follows when warranted, visited this issue in the course of soliciting comments on a petition from an ICC water carrier requesting approval to provide free or reduced-rate "familiarization" trips to travel agents and tour guides, in order to compete with foreign competitors -- not subject to ICC jurisdiction -- allegedly already engaged in such practices. In re Delta Queen Steamboat Co. -- Petition for Exemptive Relief, No. WC-34, 1980 WL 14232 (I.C.C. Oct. 3, 1980). The ICC observed therein that reduced rates for promotional purposes are not prohibited if not unduly discriminatory. Id. at \*2. The ICC later had occasion to define such rates: "A promotional fare generally has three characteristics: (1) limited duration; (2) attractive price or level of service quality; and (3) some added feature in addition to those normally offered." In re Bus Rate Bureau Procedures, Ex Parte No. 297 (Sub-No. 6), 1983 WL 27953 (I.C.C. Mar. 2, 1983). The circumstances

to file an amended proposed tariff eliminating any reference to noncompensatory familiarization tours.

In determining whether to grant or deny an application for a certificate of authority, the Compact at Title II, Article XI, Section 7 requires that the Commission determine whether an applicant is fit, willing, and able to perform the transportation properly and conform to the provisions of the Compact and the Commission's rules, regulations, and requirements and whether the transportation is consistent with the public interest. Pursuant to Commission Rule No. 6, this order and fulfillment of its requirements will provide notice of DC Ducks' application for a certificate of authority.

THEREFORE, IT IS ORDERED:

1. That applicant shall publish once in a newspaper of general circulation in the Metropolitan District, no later than May 24, 1994, notice in the form prescribed by the staff of the Commission.

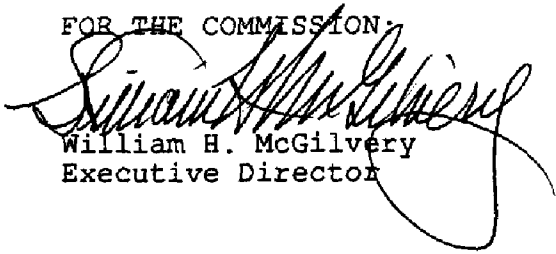
2. That applicant shall file with the Commission, no later than June 14, 1994, an original and four copies of an affidavit that notice has been published as required in the preceding paragraph.

3. That applicant shall file with the Commission, no later than May 24, 1994, an original and four copies of an amended proposed tariff eliminating any reference to noncompensatory service.

4. That any person wanting to protest the application, in accordance with Commission Rule No. 13 and Regulation No. 54-04(a), and any person wanting to comment on the application, in accordance with Regulation No. 54-04(a), shall file such protest or comment at the office of the Commission, 1828 L Street, N.W., Suite 703, Washington, DC 20036-5104, no later than June 14, 1994, and shall simultaneously serve a copy of such protest or comment on applicant's representative, Ms. Libby de Caetani, President, D.C. Ducks, Inc., 116 South Front Street, Memphis, TN 38103.

5. That any person seeking a formal oral hearing on this matter, in accordance with Commission Regulation No. 54-04(b), shall request one no later than June 14, 1994, and shall simultaneously serve a copy of such request on applicant's representative, Ms. Libby de Caetani, President, D.C. Ducks, Inc., 116 South Front Street, Memphis, TN 38103.

FOR THE COMMISSION:

  
William H. McGilver  
Executive Director

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reported in these decisions do not obtain here. Under Article XI, Section 3(a) of the Compact, this Commission has no jurisdiction over applicant's proposed water operations; there is no indication that applicant will be disadvantaged by competitors not subject to this Commission's jurisdiction, and applicant's proposed familiarization practice does not display the aforementioned characteristics of a promotional fare.